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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 17, 1998

APPLICATION OF

ROBERT A. WINNEY

d/b/a THE WATERWORKS COMPANY
OF FRANKLIN COUNTY

CASE NO. PUE980057

For an increase in rates and charges

ORDER DENYING COMMISSION STAFF MOTION
AND SCHEDULING HEARING

Before the Commission is the Commission Staff Motion to Dismiss on the grounds that the proposed rate revisions were confusing and did not satisfy the requirements of § 56-237 of the Code of Virginia, which requires that revisions to rates, charges, rules and regulations be plainly indicated. As authorized by our order of February 20, 1998, the Company responded to the Staff Motion.

The Commission has considered the Staff's motion, the Company's response, and the application filed with the Clerk of the Commission on February 2, 1998. After reviewing these documents and considering the arguments, the Commission will deny the Staff motion to dismiss. The Commission agrees with the Staff that there is ambiguity in the rates and charges proposed by the Company. The proposed revisions include multiple rates and unspecified effective dates for services. The filing does,

however, provide notice, and we decline to dismiss. Tariffs and proposed tariffs, however, are construed narrowly against the issuer. While we will accept the proposed tariff revisions and direct further proceedings, the Commission will consider the Company to have given adequate notice of only the lowest rates and charges proposed in its filing.

Accordingly, the Commission will treat this application as proposing a revision in the minimum charge for water service from the currently approved flat rate of \$67.50 per quarter, payable in advance for each calendar quarter of the year, to \$100 per quarter. The annual availability fee is proposed to increase from the currently approved \$60 per year to \$100 per year. In addition to these proposed revisions in existing rates and charges, the Company proposes to establish a service connection fee of \$1,000; a Turn-On Charge of \$50; and a Bad Check Charge of \$28. The Company also proposes to apply a late payment charge of 1.5% per month, or 18% a year, as provided by the Commission's Rules on Meter Testing, Bad Check Charges, and Late Payment Charges, 20 VAC 5-10-10 C. The Company also proposes to collect a security deposit equal to two months' charges.

As set out in this order, we will establish procedures for an investigation and hearing on this application. The Company is, of course, free to withdraw this application and recommence the process by filing proposed revised rates and charges.

In light of certain points raised in the Company's response to the motion to dismiss, the Commission will set out clearly the applicable Code provisions under which we are proceeding. This proceeding must be conducted pursuant to the procedures generally provided by Chapter 10 of Title 56 of the Code of Virginia. While the General Assembly has enacted the Small Water or Sewer Public Utility Act, §§ 56-265.13:1 - .13:7 of the Code of Virginia, appearing as Chapter 10.2:1 of Title 56, these provisions are not currently applicable to Robert A. Winney, d/b/a The Waterworks Company of Franklin County. As provided by § 56-265.13:13, "this chapter [Chapter 10.2:1 of Title 56] shall apply to every certificated water or sewer public utility company" The Company has an application for a certificate of convenience and necessity docketed before the Commission as Case No. PUE970119. In our Interim Order of February 27, 1998, in Case No. PUE970119, the Commission established requirements that the Company must satisfy before a certificate of public convenience and necessity will be issued. As of today, the Company has not satisfied these requirements. Accordingly, Robert A. Winney, d/b/a The Waterworks Company of Franklin County may not revise its rates and charges upon 45 days' notice to its customers and to the Commission as provided by § 56-265.13:5.

When the Company satisfies the various conditions set out in the Commission's Interim Order, we will consider issuing a certificate of convenience and necessity. If the Company obtains

a certificate, it will then fall under the provisions of the Small Water or Sewer Public Utility Act, including the simplified notice provisions of § 56-265.13:5 of the Code of Virginia, but not until then.

The Commission has suspended the proposed revision in rates and charges for 150 days from filing as provided by § 56-238 of the Code of Virginia. This suspension runs to and through July 2, 1998. Since the Commission will not conclude this proceeding by July 2, the following provision of § 56-238 may apply:

If the proceeding has not been concluded and an order made at the expiration of the suspension period, after notice to the Commission by the public utility making the filing, the proposed rates, tolls, charges, rules or regulations shall go into effect. Where increased rates, tolls or charges are thus made effective, the Commission shall, by order, require the public utility to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, and upon completion of the hearing and decision, to order such public utility to refund with interest at a rate set by the Commission, a portion of such increased rates, tolls or charges by its decision found not justified.

According to the Company's tariff, the minimum quarterly charge is paid in advance for each calendar-year quarter. Although the tariff provides for payment by the 10th of the month, the Commission interprets the Company's proposed quarterly charge to cover service from the first day of the first month of

the quarter. Since the rates have been suspended through July 2, 1998, the Company cannot collect the increased charge of \$100 per quarter, subject to refund, unless it satisfies the requirements of § 56-238 before October 1, 1998.

Upon consideration of the application, the Commission will set this matter for hearing and direct an investigation.

Accordingly,

IT IS ORDERED THAT:

(1) A public hearing be held on this application beginning at 10:00 a.m. on September 9, 1998, in the Commission's courtroom, Tyler Building, Second Floor, 1300 East Main Street, Richmond, Virginia.

(2) As provided by § 12.1-31 of the Code of Virginia and Rule 7:1 of the Commission's Rules of Practice and Procedure ("the Rules"), 5 VAC 5-10-520, a hearing examiner be assigned to conduct all further proceedings on behalf of the Commission concluding with the filing of a final report to the Commission.

(3) On or before May 27, 1998, the Company shall file with the Commission's Division of Public Utility Accounting, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218-1197, an income statement, a balance sheet, and a cash flow statement for water operations for the year ending December 31, 1997; a copy of Robert A. Winney's Federal Income Tax Return for 1997; and such other information as the Division of Public Utility Accounting may require.

(4) The Commission Staff shall undertake an investigation of this application.

(5) On or before July 1, 1998, any person who expects to submit evidence, to cross-examine witnesses, and to participate in this proceeding as a protestant pursuant to Rule 4:6 of the Rules, 5 VAC 5-10-180, shall file an original and five (5) copies of a notice of protest with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and simultaneously serve a copy on Robert A. Winney, d/b/a The Waterworks Company of Franklin County, 430 Windtree Drive, Moneta, Virginia 24121. Any corporate entity or governmental unit that wishes to protest must be represented by legal counsel as required by Rule 4:8 of the Rules, 5 VAC 5-10-200.¹

(6) On or before July 22, 1998, the Company shall file with the Clerk of the Commission at the address in Paragraph (5) an original and seven (7) copies of the testimony and exhibits that it intends to offer at the hearing in support of its application and shall serve one (1) copy of all persons who filed notices of protests.

(7) On or before August 6, 1998, each protestant shall file with the Clerk of the Commission at the address in Paragraph (5) an original and seven (7) copies of its protest, as required by Rule 5:16(b), 5 VAC 5-10-420, and an original and seven (7)

¹ Upon request, the Commission's Document Control Center will provide a copy of the Rules at no charge.

copies of the testimony and exhibits that it intends to offer at the hearing in support of its protest and shall serve one (1) copy of the protest, testimony, and exhibits on the Company and on all other parties.

(8) On or before August 13, 1998, the Staff shall file with the Clerk of the Commission an original and seven (7) copies of any testimony and exhibits that it intends to offer at the hearing and shall serve one (1) copy on all parties.

(9) Any interested person may intervene in this proceeding, in support of or in opposition to the application as provided by Rule 4:7 of the Rules, 5 VAC 5-10-190, by attending the hearing and completing and filing with the Bailiff a notice of appearance. Interested persons should contact the Bailiff in the courtroom by 9:45 a.m. on the day of the hearing.

(10) Any person may file written comments addressed to the Clerk of the Commission at the address in Paragraph (5) above. All comments should refer to Case No. PUE980057, and should be received by August 19, 1998.

(11) Individuals who require an accommodation to participate in the hearing should contact the Commission at 1-800-552-7245 (Voice) or 1-804-371-9026 (TDD). Individuals requesting accommodation should contact the Commission by September 1, 1998.

(12) On or before May 4, 1998, the Company shall mail by first-class mail, postage prepaid, a copy of this Order to all

customers, including customers paying the availability fee; to the county administrator of Franklin County; and to the chairman of the Board of Supervisors of Franklin County.

(13) On or before May 13, 1998, the Company shall file with the Clerk of the Commission at the address in Paragraph (5) a certificate of the mailing required in Paragraph (12).